

TO: Licensed Child-placing Agencies

FROM: Wenda Singer, Program Development Consultant

DATE: January 4, 2005

SUBJECT: "Background Checks for Child Welfare Agencies" Regulation
(22 VAC 40-191-60.A.4), effective April 1, 2004

The purpose of this memorandum is to provide clarification about the "Background Checks for Child Welfare Agencies" regulation. The two standards for which clarification is provided are the standard for background checks for persons 14 years of age and older and the standard requiring persons 18 years of age and older to have background checks.

Background checks for persons 14 years of age and older

The regulation, at 22 VAC 40-191-40 C 5 provides that persons 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes. The exception is that persons 14 years of age to 18 years of age who are placed in a foster home by a child-placing agency are not required to have a search of the central registry. This does not preclude the search; it does not require it. Because "child-placing agency" is not further defined as a licensed child placing agency or a local department of social services, the term will be interpreted to mean both categories. This interpretation is effective immediately.

Background checks for persons 18 years of age and older living in homes

The regulation provides that all adults living in foster and adoptive homes must have background checks. It further explains that these checks are required within 30 days of a person age 18 years or older beginning to reside in the home or when a person living in the home becomes 18 years old. (See 22 VAC 40-191-40 C 4.)

Several licensed child-placing agency staff members have expressed concern about the potential impact of this standard on placements. The primary concerns are:

- Persons in foster placements might have disqualifying offenses by the time they become 18 years old and the placement not be allowed to continue after their 18th birthday;

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- Persons in a foster placement might obtain a disqualifying offense after their 18th birthday, causing the placement to be in jeopardy; and
- Teenagers living in the home, who have not been placed, might have disqualifying offenses by their 18th birthday, thus jeopardizing the approval status of the home.

In each of the above situations an allowable variance may be requested. Please refer to Part V of the General Procedures and Information for Licensure regulation for the allowable variance process and a description of circumstances in which an allowable variance may be requested. Please note that an allowable variance is not available for foster or adoptive parents or for any adults living in a family day home. As you are already aware, there is one disqualifying offense exception in the Code of Virginia for adoptive parents. A child-placing agency may approve as adoptive parents individuals convicted of not more than one misdemeanor of simple assault and battery not involving abuse, neglect or moral turpitude, provided ten years have elapsed following the conviction.

In general, a licensee or applicant may request an allowable variance when he or she has sound reasons to believe that the safety or well-being of persons in care is not endangered and when there would be no violation of state law or the requirements of another regulatory agency. The Division of Licensing Programs evaluates each request on its merits.

The Division of Licensing Programs is providing a transition period to accommodate any licensed child-placing agencies that may have been waiting for clarification prior to taking action about a person 18 years of age or older living in the home. There will be no violation if an allowable variance request is postmarked by January 28, 2005. From that point on, procedures should be in place to request an allowable variance in sufficient time to avoid a violation. Your Licensing Specialist is available to provide the allowable variance forms and answer any questions about the procedures for submitting these requests.

cc. Carolynne Stevens, Lynne Edwards, Bill Spitzer, Leslie Knachel, Ann Vogt, Nancy Germani, Robin Orser